

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATT BURCAR AND
JOHN BUREK,

Plaintiffs,

Case No. 22-cv-12054
Hon. Matthew F. Leitman

v.

DECORATIVE PANEL
INTERNATIONAL, INC.,

Defendant.

**ORDER GRANTING PLAINTIFFS LEAVE
TO FILE A FIRST AMENDED COMPLAINT**

On August 31, 2022, Plaintiffs Matt Burcar and John Burek filed this putative class action against Defendant Decorative Panel International, Inc. (“DPI”). (*See* Compl., ECF No. 1.) Plaintiffs allege, among other things, that DPI has “released, and on frequent separate, distinct, and additional occasions continues to release, noxious odors onto Plaintiffs’ property, which has caused property damage by private nuisance and negligence.” (*Id.* at ¶2, PageID.1.)

On November 18, 2022, DPI filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See* Mot. to Dismiss, ECF No. 10.) One of bases for dismissal is that Plaintiffs have failed to plead sufficient facts to state viable claims under the Supreme Court’s decisions in *Ashcroft v. Iqbal*, 556 U.S. 662, 678

(2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). (*See, e.g., id.* at PageID.54-56.)

Without expressing any view regarding the merits of the motion to dismiss, the Court will grant Plaintiffs the opportunity to file a First Amended Complaint in order to remedy the alleged deficiencies in their allegations identified by DPI in the motion to dismiss. The Court does not anticipate allowing Plaintiffs another opportunity to amend to add factual allegations that they could now include in their First Amended Complaint. Simply put, this is Plaintiffs' opportunity to amend their allegations to cure the alleged deficiencies in their claims.

By **December 12, 2022**, Plaintiffs shall file a notice on the docket in this action notifying the Court and DPI whether they will amend the Complaint. If Plaintiffs provide notice that they will be filing a First Amended Complaint, they shall file that amended pleading by no later than **January 16, 2023**. If Plaintiffs provide notice that they will not be filing a First Amended Complaint, they shall respond to the motion to dismiss by no later than **January 16, 2023**.

Finally, if Plaintiffs provide notice that they will be filing a First Amended Complaint, the Court will terminate without prejudice DPI's currently-pending motion to dismiss as moot.

DPI may re-file a motion to dismiss directed at the First Amended Complaint if DPI believes that such a motion is appropriate after reviewing that pleading.

IT IS SO ORDERED.

Dated: November 22, 2022

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on November 22, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

(313) 234-5126